

INFORMATION PAPER

SUBJECT: Private Organizations (POs) in USAREUR

1. PURPOSE. To provide information concerning the history and administration of POs in USAREUR.

2. BOTTOM LINE. POs in USAREUR are subject to regulation by DoD, HQDA, USAREUR, and, to some extent, host nation law.

3. DISCUSSION.

a. Various factors have placed the administration of USAREUR POs into flux over the past several years. The renegotiation of the SOFA Supplementary Agreement (SA) affected POs in many ways. One outcome of the new SA, however, was very positive for spouse clubs in USAREUR (see discussion of spouses clubs and bazaars below at para 3c(1)). In October 1997, DoD reissued DODI 1000.15, Private Organizations on DoD Installations. Based on the guidance in the new DODI 1000.15 and other changes to PO rules contained in Change 3 to the JER, HQDA rescinded its regulation on private organizations, AR 210-1, in May 1998. A DAIG investigation and report issued in February 1998 also identified numerous systemic problems with PO administration and operations in USAREUR.

b. The USAREUR Regulation 210-1, published in 1994 with a minor Change 1 in July 1996, remained in effect after rescission of the AR. Many portions of the UR, however, were outdated or invalid. Other sections required amendment to implement policy changes motivated by the DAIG report. The Community and Family Support Center (CFSC) objected to USAREUR issuing a new UR 210-1; it considers a UR without a corresponding AR as unauthorized supplementation. ODCSPER therefore decided to issue new USAREUR PO guidance in the form of a DCG policy memorandum.

c. The following are some of the key issues that apply to POs in USAREUR under the recently published Command Memorandum, USAREUR Private Organizations and Fundraising Policy:

(1) Bazaars. Spouses clubs have traditionally hosted bazaars in USAREUR. These are **the** major source of income for most of the spouses clubs. POs are not instrumentalities of the U.S. and are therefore subject to German law, including income tax. Under an exchange of notes, the German Foreign Office has recognized the spouses clubs under Article 71 of the Protocol of Signature to the SA to the NATO SOFA. This status not only allows the spouses clubs to be exempt from value added tax (VAT), it also exempts them from German income tax

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(equivalent status as an "eingetragener Verein," or "e.V.," under German income tax law). To be exempt from VAT, however, all deliveries of goods or services must be "affected through . . . official procurement agencies [of the U.S.]." This means that spouses groups *must* contract through the MWR to receive VAT relief when conducting fundraising events that involve outside vendors.

(a) This MWR contracting requirement itself raises a sensitive issue identified in the DAIG report. NAFs may not provide nonreimbursable support to POs. The MWR can, however, provide services to the PO under contract. MWR guidelines state that services should be provided at cost plus at least an 8% profit margin. Spouses clubs that attempt to conduct a major fundraising activity without contracting through the MWR do not qualify as Article 71 organizations and are subject to German law, including income tax on their profits. Some spouses clubs have resisted the MWR cost plus profit policy (the USAREUR policy sets a profit goal of 10%, subject to local negotiations). In other cases, certain MWR activities have attempted to maximize their leverage and extract unreasonable fees and charges from POs for logistic support.

(b) A second option for spouses groups to conduct bazaars (and other fundraising) is for the MWR to actually plan and sponsor the event. The MWR then hires the PO to provide personnel support. The PO contacts and selects the vendors, the MWR contracts with vendors, and the MWR pays the PO for its services. Because the profits to the PO are obtained through the MWR, the income to the spouses group is still exempt from German tax.

(2) Thrift Shops. The Article 71 status for spouses clubs extends to thrift shop operations (income exempt from German income tax) *only if* the thrift shop is affiliated with a spouses club. Most already are, but several are not and do not want to be. If not chartered as a spouses club, the PO (and its income) is subject to German law, including income tax, employment, and medical care. Another issue in thrift shop sales is purchase and resale. Thrift shops (those affiliated with spouses clubs) are not approved to conduct resale operations of arts and crafts. The thrift shop would require approval of the BSB or ASG commander to conduct such sales, which would seem to violate their stated purpose (from charter documents) and violate the MWR/AAFES noncompetition requirement (AAFES has numerous arts and crafts concessionaires). If the seller does not have a German vendors license, it also violates AR 210-7 and UR 210-70 provisions on commercial activities.

(3) Fundraising (generally). Traditionally POs were required to be chartered (constitution and bylaws approved by BSB/ASG) to conduct major fundraisers (soliciting funds from persons outside the PO). Unchartered POs, called informal funds, were limited to minor fundraisers, or raising funds solely within their own membership. Over time, the distinction has become blurred in many locations from lack of enforcement. Every cup and flower fund, party

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committee, and wandering club wants to hold a bake sale, car wash, or other major fundraiser. The UR policy continues the limitation from the old AR 210-1 of prohibiting unchartered POs from conducting major fundraisers. The USAREUR policy also requires the command to enforce this limitation.

(4) Athletic Officiating Activities (AOAs). The new PO policy allows two options for AOAs; they can organize as a business under U.S. law or under host nation law. Either way, they must receive permission from German officials to operate (as a German business subject to German laws or as a U.S. business authorized to operate only on U.S. installations). Many BSBs are now contracting directly with sports officials and avoiding the AOAs altogether.

APPROVED BY: _____ DATE: 18 August 2000

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